

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**Council Bluffs Community School  
District**  
Council Bluffs, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2006-AQ-03

TO: Gina Malloy, School Board President  
Council Bluffs Community School District  
17561 Turnberry Ridge  
Council Bluffs, Iowa 51503

**I. SUMMARY**

This administrative consent order is entered into between the Council Bluffs Community School District (school) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving National Emission Standards for Hazardous Air Pollutants (NESHAP) violations for a renovation project at Thomas Jefferson High School in Council Bluffs, Iowa.

The school neither admits nor denies the allegations contained in the administrative consent order or the allegations made by the DNR with respect to the matters discussed therein. The school is entering into this administrative consent order solely for the purposes of settlement and to avoid the costs of litigation. The school specifically denies that it bears any responsibility or obligations under any contract relating to the Thomas Jefferson additions and renovations project relative to the alleged violations set forth in the administrative consent order

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Marion Burnside  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8443

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. The school hired W. Boyd Jones Construction Company, Inc. (Boyd Jones) as the general contractor for several school renovation projects over the course of a year at Thomas Jefferson High School in Council Bluffs. During the summer of 2006, the school was in the process of removing and renovating the heating and cooling systems. Boyd Jones hired subcontractor Mechanical Systems, Incorporated (Mechanical Systems) to remove and renovate the heating and cooling systems. Mechanical Systems hired subcontractor Glissman Salvage to remove the old pipes.

2. On July 13, 2006, a representative from the Institute for Environmental Assessment, the school's consultant, contacted the DNR. The representative reported that approximately 25-30 linear feet of pipe with pipe wrap still intact was cut and carried through the media center and hallway. Debris was scattered throughout the media center and hallway. The representative stated the incident occurred on July 12, 2006, and was discovered on the morning of July 13, 2006. An asbestos NESHAP notification was not submitted for this part of the project.

3. On July 14, 2006, Marion Burnside, asbestos NESHAP coordinator for the DNR, conducted an inspection at the school. When Mr. Burnside arrived at the school for the inspection, Contracting Specialties, an asbestos abatement contractor, was at the school. The area of the school with the pipe wrap debris was contained and cleanup had begun. Mr. Burnside collected a sample of the pipe wrap and took pictures of the site. Mr. Burnside met with Neal Evans, Director of Facilities, Maintenance and Custodial Services for the school; Jerry Wewell, representative from Mechanical Systems; and Mike Heser, representative from Boyd Jones. Mr. Burnside was informed that Mechanical Systems directed Glissman Salvage to remove the pipe in the media center and that Glissman Salvage removed a pipe that still had insulation on it. The Glissman Salvage employees were not licensed asbestos contractors.

4. On July 17, 2006, Kevin Glissman from Glissman Salvage submitted a letter to DNR regarding the incident. Mr. Glissman stated he had been contacted by Mechanical Systems informing him that there were some pipes in the media center area

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that needed to be removed. On July 12, 2006, three employees from Glissman Salvage began removing the pipe from the media center. Part of the pipe was without insulation and part of the pipe had insulation still intact. The Glissman Salvage employees believed the asbestos had been removed from the pipe since the area they were working in had been previously taped off and reopened when the asbestos removal had been concluded. The employees proceeded to cut the pipe and later in the day transported the pipe to a cart in the hallway.

5. On July 25, 2006, Mr. Burnside submitted the sample he collected at the school to the University of Iowa Hygienic Laboratory for asbestos content analysis. On August 3, 2006, the DNR received the analytical results of the sample. The sample contained a regulated amount of asbestos – 50% chrysotile asbestos.

6. On August 3, 2006, DNR issued a Notice of Violation letter to the school for several asbestos NESHAP violations. The letter cited the following violations: failure to notify; failure to keep asbestos containing material adequately wet; failure to have a trained supervisor on site; and failure to seal all asbestos containing material in a leak tight container. Notice of Violation letters with the same violations were also sent to Boyd Jones, Mechanical Systems, and Glissman Salvage.

7. The school has previous knowledge of the asbestos NESHAP regulations and has been cited for similar violations as those cited in this administrative consent order in the past. On December 15, 2005, the school was issued a Notice of Violation letter for similar violations in connection with a renovation project at the school's auditorium and cafeteria.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. Proper and timely notification was not given prior to the removal of the pipes. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply

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with the procedures. As the owner for the project, the school is liable for the actions of its general contractor and subcontractors. The facts in this case indicate that the school was not in compliance with these provisions when the pipe removal project occurred.

4. 40 CFR section 61.145(c)(1) states that the owner or operator of a demolition or renovation shall remove all regulated asbestos containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material. As the owner for the project, the school is liable for the actions of its general contractor and subcontractors. The pipe wrap was not removed prior to Glissman Salvage removing the pipe in the media center area. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(c)(2)(i) states when a facility component covered with regulated asbestos containing material is being taken out of a facility as a unit or in sections that the regulated asbestos containing material must be adequately wet at the time the cutting occurs. As the owner for the project, the school is liable for the actions of its general contractor and subcontractors. The pipe and pipe wrap were removed dry by Glissman Salvage. The above facts indicate a violation of this provision.

6. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped shall be adequately wet and shall remain wet until collected and contained. As the owner for the project, the school is liable for the actions of its general contractor and subcontractors. The facts in this case indicate that the general contractor, subcontractors, and the school were not in compliance with this provision when the asbestos removal projects occurred. Dry regulated asbestos containing material was found in the media center and hallway where pipe had been removed and carried. The above facts indicate a violation of this provision.

7. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the pipe removal. The above facts indicate noncompliance with this provision.

**V. ORDER**

THEREFORE, the DNR orders and the school agrees to do the following:

1. The school shall pay a penalty of \$3,500.00 within 30 days of the date from which the Director signs this administrative consent order.

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**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$3,500.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal may have allowed the school to save time and money. However, any economic benefit the school received was minimal because the area had to be cleaned up in accordance with the regulations. Therefore no economic benefit is being assessed.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to properly remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. The school had been cited for similar violations less than a year ago. For these reasons, \$2,000.00 is assessed for this factor.

c. Culpability. The school has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. The school is responsible for the actions of its general contractor and subcontractors. The school has prior knowledge of the asbestos regulations in that it has been cited for similar violations in the past. For these reasons, \$1,500.00 is assessed for this factor.

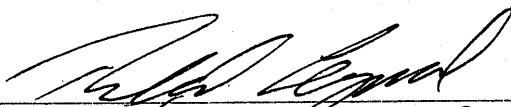
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**VII. WAIVER OF APPEAL RIGHTS**

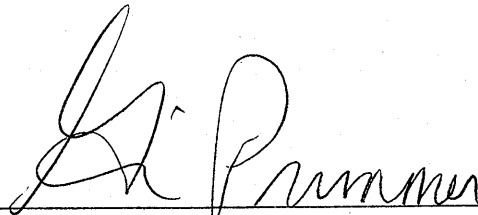
This administrative consent order is entered into knowingly by and with the consent of the school. For that reason, the school waives the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR specifically reserves the right to bring enforcement action or to request that the Attorney General initiate legal action based on any subsequent violations, including failure to timely pay any penalty. DNR retains the right to pursue any violations not specifically identified in Section IV Conclusions of Law of this administrative consent order. The DNR reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order.

  
JEFFREY B. VONK, DIRECTOR *Richard Leopold*  
Iowa Department of Natural Resources

Dated this 19 day of  
January, 2006 *7*

  
Council Bluffs Community School District

Dated this 22 day of  
December, 2006

Barb Stock (No asbestos file number); Kelli Book; EPA; VII.C.4